

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

STACY CANDLER,	)	No. CV-F-05-020 REC
	)	(No. CR-F-95-5193 MDC)
	)	
Petitioner,	)	ORDER DENYING PETITIONER'S
	)	MOTION FOR DEFAULT JUDGMENT,
vs.	)	DISMISSING PETITION FOR LACK
	)	OF JURISDICTION AND
	)	DIRECTING CLERK TO ENTER
J.E. SLADE,	)	JUDGMENT
	)	
	)	
Respondent.	)	
	)	
	)	

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On December 1, 2004, petitioner Stacy Candler filed a "Petition for Writ of Habeas Corpus By a Person in Federal Custody" pursuant to 28 U.S.C. § 2241 in the United States District Court for the Central District of California. The matter was transferred to this court by Order filed on December 16, 2004, the Central District ruling that the petition is deemed to be a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 and further ruling:

By challenging the legality of her federal sentence, not its execution, the Petition

1           should have been brought, and is construed  
2           as, a successive Section 2255 motion.  
3           Petitioner appears to have brought the  
4           Petition as a Section 2241 petition in order  
5           to avoid having to obtain Circuit  
6           authorization to file a second or successive  
7           Section 2255 motion. Regardless, since venue  
          is properly located in the Eastern District  
          of California, the ultimate decision of  
          whether the Petition should be dismissed as  
          an unauthorized successive Section 2255  
          motion is properly reserved for the  
          sentencing judge.

8           After the action was transferred to this court, an entry was  
9           made on January 1, 2005 on the docket in the civil case  
10          designation: "Set Case Management deadline of 3/3/2005 for  
11          respondent to respond to the petition". This docket entry was  
12          not made pursuant to any court order that respondent file a  
13          response to the petition nor is there any indication that  
14          respondent was served with the docket entry either electronically  
15          or by mail.

16          On July 22, 2005, petitioner filed a motion for default  
17          judgment, contending that she is entitled to immediate release  
18          from incarceration because respondent had not filed a response to  
19          her petition within the time set forth on the January 1, 2005  
20          docket entry.

21          Petitioner's motion for default judgment is denied. The  
22          court had not yet reviewed the petition and had not ordered a  
23          response to it from respondent. The docket entry was for  
24          internal tracking purposes only.

25          The court dismisses petitioner's deemed Section 2255 motion.  
26          The record in this action establishes that petitioner filed a

1 Section 2255 motion on April 27, 1998, which motion was denied by  
2 Order filed on July 9, 1998. Therefore, petitioner cannot  
3 proceed with the instant motion until he applies for leave to  
4 file a second or successive Section 2255 motion with the Ninth  
5 Circuit Court of Appeals and receives permission from the Ninth  
6 Circuit to so proceed. Absent such permission, this court lacks  
7 jurisdiction to consider the merits of the instant motion.  
8 United States v. Allen, 157 F.3d 661, 664 (9<sup>th</sup> Cir. 1998).

9 ACCORDINGLY:

10 1. Petitioner's motion for default judgment is denied.

11 2. Petitioner's deemed motion to vacate, set aside or  
12 correct sentence pursuant to 28 U.S.C. § 2255 is dismissed.

13 3. The Clerk is directed to enter judgment for respondent.

14 IT IS SO ORDERED.

15 **Dated: December 8, 2005**  
16 668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE